

(iii) Loss of training, guidance, education, and nurture suffered by a child under the age of 18 for the death of a parent, until the child becomes 18 years old.

(iv) Claims for the survivors' emotional distress, mental anguish, grief, bereavement, and anxiety are not payable, in particular claims for intentional or negligent infliction of emotional distress to survivors arising out of the circumstances of a wrongful death are personal injury claims falling under § 536.77(b)(3).

(d) *Property damage claims.* The following provisions apply to all claims arising in the United States, its commonwealths, territories and possessions.

(1) Such claims are limited to damage to, or loss of, tangible property and costs directly related thereto. Consequential damages are not included. (See § 536.50(e) and DA Pam 27-162, paragraph 2-56a.)

(2) Proper claimants are described in § 536.27. Claims for subrogation are excluded. (See § 536.27(e)). However, there is no requirement that the claimant use personal casualty insurance to mitigate the loss.

(3) Allowable elements of damages and measure of proof (additions to these elements are permissible with concurrence of the Commander USARCS). These elements are discussed in detail in DA Pam 27-162, paragraph 2-54.

(i) Damages to real property.

(ii) Damage to or loss of personal property, or personal property that is not economically repairable.

(iii) Loss of use.

(iv) Towing and storage charges.

(v) Loss of business or profits.

(vi) Overhead.

§ 536.78 Settlement authority for claims under the Military Claims Act.

(a) *Authority of the Secretary of the Army.* The Secretary of the Army, the Army General Counsel, as the Secretary's designee, or another designee of the Secretary of the Army may approve settlements in excess of \$100,000.

(b) *Delegations of Authority.* (1) Denials and final offers made under the delegations set forth herein are subject to

appeal to the authorities specified in paragraph (d) of this section.

(2) The Judge Advocate General (TJAG) and the Assistant Judge Advocate General (TAJAG) are delegated authority to pay up to \$100,000 in settlement of a claim and to disapprove a claim regardless of the amount claimed.

(3) The Commander USARCS is delegated authority to pay up to \$25,000 in settlement of a claim and to disapprove or make a final offer in a claim regardless of the amount claimed.

(4) The Judge Advocate (JA) or Staff Judge Advocate (SJA), subject to limitations that USARCS may impose, and chiefs of a command claims service are delegated authority to pay up to \$25,000 in settlement, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding \$25,000.

(5) A head of an area claims office (ACO) is delegated authority to pay up to \$25,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding \$25,000. A head of a claims processing office (CPO) with approval authority is delegated authority to approve, in full or in part, claims presented for \$5,000 or less, and to pay claims regardless of the amount claimed, provided an award of \$5,000 or less is accepted in full satisfaction of the claim.

(6) Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussions also related to approval, settlement and payment authority see also paragraph 2-69 of DA Pam 27-162.

(c) *Settlement of multiple claims arising from a single incident.* (1) Where a single act or incident gives rise to multiple claims cognizable under this subpart, and where one or more of these claims apparently cannot be settled within the monetary jurisdiction of the authority initially acting on them, no final offer will be made. All claims will be forwarded, along with a recommended disposition, to the authority who has monetary jurisdiction over the largest claim for a determination

of liability. However, where each individual claim, including derivative claims, can be settled within the monetary authority initially acting on them, and none are subject to denial, all such claims may be settled even though the total amount exceeds the monetary jurisdiction of the approving or settlement authority.

(2) If such authority determines that federal liability is established, he or she may return claims of lesser value to the field claims office for settlement within that office's jurisdiction. The field claims office must take care to avoid compromising the higher authority's discretion by conceding liability in claims of lesser amount.

(d) *Appeals.* Denials or final offers on claims described as follows may be appealed to the official designated:

(1) For claims presented in an amount over \$100,000, final decisions on appeals will be made by the Secretary of the Army or designee.

(2) For claims presented for \$100,000 or less, and any denied claim, regardless of the amount claimed, in which the denial was based solely upon an incident-to-service bar, exclusionary language in a federal statute governing compensation of federal employees for job-related injuries (see § 536.44), or untimely filing, TJAG or TAJAG will render final decisions on appeals, except that claims presented for \$25,000 or less, and not acted upon by the Commander USARCS, are governed by paragraph (d)(3) of this section.

(3) For claims presented for \$25,000 or less, final decisions on appeals will be made by the Commander USARCS, his or her designee, or the chief of a command claims service when such claims are acted on by an ACO under such service's jurisdiction.

(4) Sections 536.64, 536.65, and 536.66 of this part set forth the rules relating to the notification of appeal rights and processing.

(e) *Delegated authority.* Authority delegated by this section will not be exercised unless the settlement or approval authority has been assigned an office code.

§ 536.79 Action on appeal under the Military Claims Act.

(a) The appeal will be examined by the settlement authority who last acted on the claim, or his or her successor, to determine if the appeal complies with the requirements of this regulation. The settlement authority will also examine the claim file and decide whether additional investigation is required; ensure that all allegations or evidence presented by the claimant, agent, or attorney are documented; and ensure that all pertinent evidence is included. If claimants state that they appeal, but do not submit supporting materials within the 60-day appeal period or an approved extension thereof, these appeals will be determined on the record as it existed at the time of denial or final offer. Unless action under paragraph (b) of this section is taken, the claim and complete investigative file, including any additional investigation, and a tort claims memorandum will be forwarded to the appropriate appellate authority for necessary action on the appeal.

(b) If the evidence in the file, including information submitted by the claimant with the appeal and that found by any necessary additional investigation, indicates that the appeal should be granted in whole or in part, the settlement authority who last acted on the claim, or his or her successor, will attempt to settle the claim. If a settlement cannot be reached, the appeal will be forwarded in accordance with paragraph (a) of this section.

(c) As to an appeal that requires action by TJAG, TAJAG, or the Secretary of the Army or designee, the Commander USARCS may take the action in paragraph (b) of this section or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

(d) Since an appeal under this subpart is not an adversarial proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claim file to be used in considering the appeal will be granted unless law or regulation does not permit access.